REMARKS

Interview Summary

The undersigned representative would like to thank Examiner Pollack for the courtesy of the telephone interview conducted on April 1, 2009, to discuss the pending claims of the captioned patent application. During the interview, the participants discussed the Section 101 and 103 rejections of the pending claims. Upon conclusion of the interview, no agreement was achieved.

Section 101 Rejections

In the Office Action, claims 2, 3, 7, 9-10, 15-17, 21 and 23-31 stand rejected under 35 U.S.C. § 101 because the claimed invention is purportedly directed to non-statutory subject matter. Applicants submit that the claims, as amended, recite patent eligible subject matter under § 101 because they are tied to a particular machine, i.e., an electronic fund transfer computer system. *See In re Bilski*, 545 F.3d 943, 88 USPQ 2d 1385, 1391 (Fed. Cir. 2008) (en banc) ("A claimed process is surely patent eligible under § 101 if...it is tied to a particular machine or apparatus..."). Further, the amended claims do not pre-empt a fundamental principle because they are limited to processes involving the recited electronic fund transfer computer system. *See id.* at 1391 ("claimed process involving a fundamental principle that uses a particular machine or apparatus would not pre-empt uses of the principle that do not also use the specified machine or apparatus in the manner claimed"). Therefore, applicants submit that the claims are patent-eligible under § 101.

Section 103 Rejections

In the Office Action, claims 2-3, 9, 15-17, 23, 25, and 29-31 stand rejected under 35 U.S.C. § 103(a) as being obvious in view of the combination of published U.S. patent application Pub. No. 2002/0052793 to Dines et al., the Applicant's admitted prior art ("AAPA"), and published U.S. patent application Pub. No. 2005/0044034 to Perry et al. Claims 26-28 stand rejected under 35 U.S.C. § 103(a) as being obvious in view of the combination of Dines, the AAPA, Perry, and published U.S. patent application Pub. No. 2002/0095361 to Trenk et al. Claims 7 and 21 stand rejected under 35 U.S.C. § 103(a) as being obvious in view of the combination of Dines, the AAPA, Perry, Official Notice and published U.S. patent application Pub. No. 2005/0125341 to Miri et al.

In this amendment, claims 15, 25, and 29 have been amended. Claims 32-33 have been added as new claims. Support for the amendments and new claims can be found throughout the specification and claims as originally filed. Applicants submit that the pending claims are patentable for the reasons set forth below.

As amended, claim 25 is directed to a method related to transaction structures concerning the forward sale of a commodity. Claim 25 has been amended to positively recite the purchaser making payments via an electronic fund transfer computer system. Claim 25 now recites:

> A method comprising:
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> paying, by a purchaser, a payment via an electronic fund transfer computer system to a first business entity pursuant to a purchase agreement that obligates the purchaser to purchase volumes of a commodity from the first business entity, where a party, separate from the first business entity, is obligated to deliver volumes of the commodity to the first business entity pursuant to a forward contract in exchange for a pre-payment from the first business entity that is paid with proceeds from an offering of debt securities to investors, where the electronic fund transfer computer system comprises a plurality of networked computers, wherein at

> least one of the networked computers comprises a read only memory and a random access memory; and
>
> paying, by the purchaser, to the party a floating payment via the electronic fund transfer computer system pursuant to a swap agreement with the party that obligates the purchaser to pay the party an amount equal to the price at which the purchaser sells the volumes of the commodity in the open market and obligates the party to pay the purchaser a fixed price,
>
> where a second business entity is obligated to supply volumes of the commodity to the first business entity pursuant to a contingent supply agreement if the party fails to deliver the necessary volumes of the commodity required by the forward contract, and the purchase agreement between the purchaser and the first business entity permits the purchaser to terminate the purchase agreement when the party defaults on the swap agreement.

The cited prior art does not render claim 25 obvious for at least two reasons. First, the cited prior art does not teach or suggest the contingent supply agreement of claim 25. Second, the cited prior art does not teach or suggest the "cross-default provision" of claim 25, which states that the "purchase agreement between the purchaser and the first business entity permits the purchaser to terminate the purchase agreement when the party defaults on the swap agreement." These points are addressed in order below.

Regarding the first point about the contingent supply agreement, the Office admitted in the previous Office Action dated March 11, 2008 that the combination of Dines and the AAPA did not disclose "wherein the arrangement further obligates a second business entity to supply volumes of the commodity to the first business entity pursuant to a contingent supply agreement if the company fails to deliver the necessary volumes of the commodity required by the forward contract." *See* Office Action dated March 11, 2008 at pg. 8. To overcome this deficiency, the previous Office Action cited Miri as disclosing this feature.

In the current Office Action, however, the Office admitted that the Miri reference also does not disclose this feature, stating:

> On pages 10-12 of the Applicant's Response, applicants argue that Dines...in view of applicant's background of invention in further view of Miri...does not disclose "wherein the arrangement further obligates a second business entity to supply volumes of the commodity to the first business entity pursuant to a contingent supply agreement if the company fails to deliver the necessary volumes of the commodity required by the forward contract."
>
> **The Examiner agrees with the Applicant's arguments** and offers new grounds of rejection. The rejection above serves as the examiners response to the applicant's arguments.

See Office Action dated Oct. 7, 2008 at pg. 11 (emphasis added).

The new grounds for rejection cited in the current Office Action, however, is paragraph 19 of Dines. As noted above, the Office has previously admitted that Dines does not disclose the contingent supply agreement feature of claim 25. *See* Office Action dated March 11, 2008 at p. 8 and Office Action dated October 7, 2008 at p. 11. Moreover, the Office Action: (1) does not state with particularity where the contingent supply agreement feature is disclosed in Dines, as paragraph 19 of Dines clearly does not disclose a contingent supply agreement; and (2) does not explain why the Office has changed its position on whether Dines shows the contingent supply agreement. The Office's previous assertion that the combination of Dines and the AAPA did not disclose this feature was correct, as this feature is not disclosed in paragraph 19 or in any other portion of Dines.

As recited in claim 25, the second business entity is only obligated to supply the commodity to the first business entity under the contingent supply agreement <u>if the party fails to provide the required volume of the commodity</u>. Clearly, no part of paragraph 19 of Dines, nor any other portion of Dines, discloses the arrangement of a contingent supply agreement as

disclosed in claim 25. Further, none of the cited references, nor any combination of the cited references cures the defects of Dines.

Regarding the second point about the cross-default provision, the Office Action implies that the combination of Dines and the AAPA does not disclose "wherein the purchase agreement between the purchaser and the first business entity permits the purchaser to terminate the purchase agreement when the party defaults on the swap agreement," because the Office Action cites Perry as disclosing this feature. *See* Office Action dated October 7, 2008 at pg. 4. Perry is directed to a paired basis swap risk and credit migration system. Lines 11-20 of paragraph 30 of Perry, which were cited in the Office Action as disclosing this feature, describe the termination provisions of Perry's commodity swap, which may occur upon: (i) the occurrence of a Termination Event, or (ii) the exercise by the system of Perry of its option to terminate. In particular, the cited passage states:

> A commodity swap may be terminated by the System, either upon the occurrence of a Termination Event, or upon the exercise by the System of its Option to Terminate. Termination Events include, without limitation: bankruptcy of a participant; a participant's failure to make a daily cash settlement payment; and a participants failure to post collateral to secure the System's net exposure in respect of the net termination payment as required. A commodity swap may be terminated by a participant upon the exercise by the participant of its Option to Terminate.

Clearly, this passage does not disclose "the purchase agreement between the purchaser and the first business entity permits the purchaser to terminate the purchase agreement when the party defaults on the swap agreement."

Perry discloses a first party (A) and a second party (B) entering into a forward contract, and the same two parties, A and B, entering into a system commodity swap. *See* Perry at ¶¶45-46. In contrast, the method of claim 25 involves: (i) the purchaser entering into a forward

contract with a first business entity, and (ii) the purchaser entering into a swap agreement with a party that is separate from the first business entity. Perry does not disclose that a party separate from A and B enters into the swap agreement. The Office cites lines 14-20 of paragraph 30 of Perry for the assertion that "a termination event could include any agreed upon event made by the participants," but even if this is disclosed in Perry, the two participants of Perry do not offer the contractual complexities of the three parties involved in the swap arrangement and purchase agreement of claim 25.

Thus, Perry fails to disclose "wherein the purchase agreement between the purchaser and the first business entity permits the purchaser to terminate the purchase agreement when the party defaults on the swap agreement," and none of the cited references, nor any combination of the cited references cures the defects of Perry. For at least these reasons, claim 25 is not obvious in view of the cited references. In addition, claims 2-3, 7, 9-10, and 26-28 are not obvious in view of their dependence from claim 25.

Independent claims 15, 29, and 32 are similar to claim 25. For analogous reasons, applicants submit that independent claims 15 and 29, and their respective dependent claims, are not obvious in view of the cited reference.

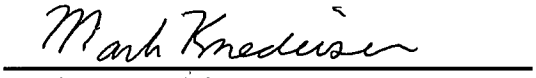
CONCLUSION

Applicants respectfully submit that all of the claims presented in the present application are in condition for allowance. Applicants' present Response should not in any way be taken as acquiescence to any of the specific assertions, statements, etc., presented in the Office Action not explicitly addressed herein. Applicants reserve the right to specifically address all such assertions and statements in subsequent responses. Applicants also reserve the right to seek claims of a broader or different scope in a continuation application.

Applicants have made a diligent effort to properly respond to the Office Action and believe that the claims are in condition for allowance. If the Examiner has any remaining concerns, the Examiner is invited to contact the undersigned at the telephone number set forth below so that such concerns may be expeditiously addressed.

Respectfully submitted,

Date: April 7, 2009



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